

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

TED QUARLES,

Defendant and Appellant.

C085521

(Super. Ct. No. 16FE022132)

A jury convicted defendant Ted Quarles of inflicting corporal injury and making criminal threats. The trial court sentenced him to three years in prison for inflicting corporal injury and a concurrent two years for making criminal threats. It also ordered defendant to pay \$7,927.80 in victim restitution, which included the victim's request of \$5,000 for "money stolen."

Defendant now contends (1) his sentence for criminal threats should be stayed pursuant to Penal Code section 654,¹ and (2) the trial court erred in ordering restitution

¹ Undesignated statutory references are to the Penal Code.

for allegedly stolen funds. We conclude the trial court did not err in declining to stay the criminal threats sentence, but it should not have ordered restitution for a crime defendant was not convicted of committing. We will modify the judgment to order victim restitution in the amount of \$2,927.80, and we will affirm the judgment as modified.

BACKGROUND

The victim works nights at a casino and she has three children with defendant. Defendant required the victim to check in with him when she left work and to send him video evidence of her whereabouts. One night defendant met her after her shift and told her to recount her entire day or he would kill her. As they drove toward her house he grabbed her, yelled at her, showed her a gun, and threatened to kill her if she did not continue driving. Upon arriving at her house, he struck her on her side, mouth, and head.

A jury found defendant guilty of infliction of corporal injury and making criminal threats. (§§ 273.5, subd. (a), 422.) The trial court sentenced him to three years for inflicting corporal injury and a concurrent two years for making criminal threats. Among other things, the trial court ordered defendant to pay the victim \$7,927.80 in restitution, based on her request. The victim's restitution request included \$5,000 for "money stolen."

DISCUSSION

I

Defendant contends his sentence for criminal threats should be stayed pursuant to section 654. He argues he cannot be sentenced for both criminal threats and corporal injury because he had a single criminal objective "of forcing [the victim] to continue driving towards the house and explaining her whereabouts that evening." We disagree.

"[S]ection 654 applies not only where there was but one act in the ordinary sense, but also where there was a course of conduct which violated more than one statute but nevertheless constituted an indivisible transaction. [Citation.] Whether a course of conduct is indivisible depends upon the intent and objective of the actor. [Citation.]

If all the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one. [Citation.]” (*People v. Perez* (1979) 23 Cal.3d 545, 551.)

On the other hand, “multiple crimes are not one transaction where the defendant had a chance to reflect between offenses and each offense created a new risk of harm.” (*People v. Felix* (2001) 92 Cal.App.4th 905, 915.) “ ‘A person who commits separate, factually distinct, crimes, even with only one ultimate intent and objective, is more culpable than the person who commits only one crime in pursuit of the same intent and objective.’ ” (*People v. Correa* (2012) 54 Cal.4th 331, 341.)

“ ‘The defendant’s intent and objective are factual questions for the trial court.’ ” (*People v. Coleman* (1989) 48 Cal.3d 112, 162.) Trial courts have broad latitude to determine whether a defendant harbored one or more objectives, and we uphold their findings on appeal if there is any substantial evidence in the record to support them. (*People v. Hutchins* (2001) 90 Cal.App.4th 1308, 1312.) “ ‘We review the court’s determination of [a defendant’s] “separate intents” for sufficient evidence in a light most favorable to the judgment, and presume in support of the court’s conclusion the existence of every fact the trier of fact could reasonably deduce from the evidence. [Citation.]’ [Citation.]” (*People v. Andra* (2007) 156 Cal.App.4th 638, 640-641.)

In *People v. Nubla* (1999) 74 Cal.App.4th 719 (*Nubla*), the court affirmed separate sentences for offenses of assault with a deadly weapon and corporal injury to a spouse where a husband pushed his wife onto the bed, held a gun against her head, and then put the gun in her mouth. (*Id.* at pp. 730-731.) The court held the defendant’s crimes were not part of an indivisible course of conduct because “[the defendant’s] act of pushing his wife onto the bed and placing the gun against her head was not done as a means of pushing the gun into her mouth, did not facilitate that offense and was not incidental to that offense.” (*Id.* at p. 731.)

Here, substantial evidence supports the trial court's decision not to stay the criminal threats sentence. While the victim drove home, defendant threatened to kill her and showed her a gun. Defendant had sufficient opportunity during the drive to reflect on his actions and consider his next move. Upon arriving at the victim's house, defendant repeatedly struck her. His threats were not made as a means of striking her, "did not facilitate that offense and was not incidental to that offense." (*Nubla, supra*, 74 Cal.App.4th at p. 731.) Viewing the evidence in the light most favorable to the judgment, substantial evidence supports the trial court's finding that defendant's crimes were not an indivisible course of conduct.

II

Defendant argues the trial court made an unauthorized restitution order because the victim's restitution request included \$5,000 for money stolen and defendant was not convicted of a theft crime. The People agree, and so do we.

"The California Constitution gives crime victims a right to restitution and, consequently, requires a court to order a convicted wrongdoer to pay restitution in every case in which a crime victim suffers a loss. (Cal. Const., art. I, § 28, subd. (b)(13)(B).) To implement this requirement, section 1202.4, subdivision (f), generally provides that 'in every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court.' " (*People v. Sy* (2014) 223 Cal.App.4th 44, 62.) But section 1202.4 "limits restitution to losses caused by the criminal conduct for which the defendant was convicted." (*People v. Lai* (2006) 138 Cal.App.4th 1227, 1249.)

We agree with the parties that the trial court exceeded its authority when it ordered defendant to pay a restitution amount that included \$5,000 for money stolen. Neither defendant's criminal threats nor his infliction of corporal injury caused the victim's loss

of \$5,000, and there was no other basis for requiring defendant to pay that amount. We will modify the judgment to reduce the restitution order by \$5,000.

DISPOSITION

The judgment is modified to order victim restitution in the amount of \$2,927.80. The judgment is affirmed as modified. The trial court is directed to amend the abstract of judgment to reflect the modified judgment, and to forward a certified copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation.

/S/
MAURO, J.

We concur:

/S/
BLEASE, Acting P. J.

/S/
ROBIE, J.